

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850

**Case No. A-5729**

**APPEAL OF HARRY PATSALIDES**

**OPINION OF THE BOARD**

(Public Hearing Date: May 15, 2002)  
(Effective Date of Opinion: June 26, 2002)

Case No. A-5729 is an administrative appeal in which the appellant charges administrative error on the part of County Executive Douglas M. Duncan, in his letter, dated January 18, 2002, responding to Mr. Patsalides's request for a waiver from the provisions of Chapter 26 of the Montgomery County Code.

Pursuant to Section 2-112(a) of the Montgomery County Code, on May 15, 2002, the Board of Appeals held a public hearing on the administrative appeal. Herbert Rubenstein, Esquire, appeared on behalf of Mr. Patsalides. He called Mr. Patsalides as a witness. Clifford L. Royalty, Esquire appeared on behalf of Montgomery County, Maryland.

Decision of the Board:      Administrative Appeal **Dismissed**.

1.      The subject property is Parcel 911, located at 12817 Georgia Avenue, Silver Spring, Maryland in the R-90 Zone.
2.      In a letter to Elizabeth Davison, Director, Department of Housing and Community Affairs, dated September 27, 2001, Mr. Patsalides requested, pursuant to Section 26-16 of the County Code, a waiver of the ceiling height requirement for a rental house at the subject property [Exhibit No. 10].
3.      By reply letter, dated October 16, 2001, Ms. Davison responded to Mr. Patsalides's request and declined to grant the requested waiver [Exhibit No. 8].
4.      In a letter to Elizabeth Davison, Director, Department of Housing and Community Affairs, dated November 19, 2001, Mr. Patsalides again requested, pursuant to Section 26-16 of the County Code, a waiver of the ceiling height requirement for the rental house at the subject property [Exhibit No. 7].

5. By reply letter, dated December 5, 2001, Joseph Giloley, Chief, Housing Code Enforcement Division of the Department of Housing and Community Affairs, reiterated that Mr. Patsalides's request for a waiver of the ceiling height requirement had been denied.

6. In a letter dated December 27, 2001, Mr. Patsalides directed his request for a waiver of the ceiling height requirement for the rental house at the subject property to County Executive Douglas M. Duncan [Exhibit No. 11].

7. By reply letter, dated January 18, 2002, Mr. Duncan stated his agreement with the Department of Housing and Community Affairs that the waiver should be denied [Exhibit No. 12].

8. Mr. Patsalides filed this appeal on January 29, 2002.

9. Mr. Royalty filed a motion to dismiss the appeal based on the fact that it was not timely filed. In the motion, and at the hearing Mr. Royalty argued that Section 26-14(b) of the County Code requires that a person "affected by any notice issued in connection with the enforcement" of Chapter 26 "appeal to the County Board of Appeals within 15 days after service [of the notice] is first effective...". Mr. Royalty further argued, citing case law [Exhibit No. 14, p.2], that the "notice issued in connection with the enforcement" in this instance was Elizabeth Davison's October 16, 2001 letter to Mr. Patsalides, that the County Executive is not authorized to enforce Chapter 26, and that his letter to Mr. Patsalides was at best a reiteration of the Department's enforcement decision. Mr. Royalty argued, therefore, that the appeal was not timely filed, and the Board does not have jurisdiction over an appeal that is not timely filed

10. Mr. Rubenstein argued that Section 26-14(b) provides for appeal of "*any notice* [emphasis added] issued in connection with the enforcement of Chapter 26", and that therefore Mr. Patsalides had sought to exhaust his administrative remedies, and that Mr. Duncan's letter is an appealable notice under Section 26-14(b).

## **FINDINGS OF THE BOARD**

Section 26-14(a) of the County Code provides in part:

Notice and orders. If the *enforcing agency* [emphasis added] determines that there has been a violation of this chapter...the enforcing agency must notify the person responsible and order action to be taken...

Section 26-14(b) further provides:

Appeal. Any person affected by any notice issued in connection with enforcement of this Chapter may appeal to the County Board of Appeals within 15 days after service is first effective under subsection (a)(4).

The Board finds that the Department of Housing and Community Affairs is the enforcing agency with respect to Mr. Patsalides's request for a waiver of the ceiling height under Chapter 26-16 of the Code. Therefore, Elizabeth Davison's October 16, 2001 letter was the appealable notice for the purposes of Section 26-14(b). The appeal, filed January 29, 2002, was not timely, and must be dismissed.

On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Angelo M. Caputo and Donna L. Barron, Vice Chairman in agreement, and Donald H. Spence, Jr., Chairman necessarily absent, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution require by law as its decision on the above-entitled case.

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Donna L. Barron  
Vice-Chairman, Montgomery County Board of

Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 27<sup>th</sup> day of June , 2002.

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.